



Ms. Linda Cloud
Executive Director
Texas Lottery Commission
P.O. Box 16630
Austin, Texas 78761-6630

OR2002-5730

Dear Ms. Cloud:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 170438.

The Texas Lottery Commission (the "commission") received two requests for time sheets for two named individuals and for correspondence to the commission from the Bastrop County District Attorney regarding a particular prosecution. You have not submitted the requested correspondence for our review. We therefore assume that you have released this information to the extent that it exists. If you have not released it, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302. You claim that the submitted information is excepted from disclosure under section 552.103, 552.108, 552.117, and 552.1175 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You argue that the information submitted in Exhibits B, C, and D is excepted from public disclosure under section 552.108 of the Government Code. Section 552.108(a) excepts from disclosure

[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime ... if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]

Gov't Code § 552.108(a)(1). Section 552.108 applies to a "law enforcement agency," that is, an agency that investigates crimes and enforces criminal laws. *See, e.g.,* Open Records

Decision No. 126 (1976) (Attorney General's Organized Crime Task Force). It does not generally apply to an agency whose chief function is regulatory in character. Attorney General Opinion MW-575 (1982) (Department of Agriculture). The commission is authorized by statute to maintain a department of security staffed by commissioned peace officers or investigators and to enforce violations of the lottery law and the Bingo Enabling Act. *See* Gov't Code §§ 466.019, .020; Occ. Code §§ 2001.051, .551, .561. We therefore conclude that in conducting investigations such as the one at issue here, the commission acts as a law enforcement agency for purposes of section 552.108.

Generally, a governmental body claiming section 552.108(a)(1) must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the information in Exhibits B, C, and D relates to the commission's investigation of possible criminal activity and the resulting criminal prosecution, which is currently pending in Bastrop County. Based on this representation and our review of the submitted information, we agree that the release of this information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

We note, however, that information normally found on the front page of an offense or incident report is generally considered public. *See generally* Gov't Code § 552.108(c); *Houston Chronicle*, 531 S.W.2d 177; Open Records Decision No. 127 (1976). Thus, you must release the types of information that are considered to be front page information, even if this information is not actually located on the front page of the offense or incident report. Although section 552.108(a)(1) authorizes you to withhold the remaining information from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov't Code § 552.007. As our ruling on this issue is dispositive, we need not address your remaining arguments.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

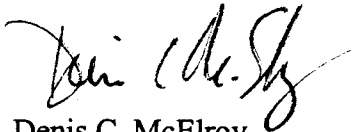
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/seg

Ref: ID# 170438

Enc. Submitted documents

c: Mr. Robert G. Fisher
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(w/o enclosures)